LIFE INSURANCE—POLICY HOLDER'S RIGHT TO PARTICIPATE IN SURPLUS.—No title to any part of the surplus of a mutual insurance company is held to belong to a policy holder in the case of *Greeff* v. *Equitable Life Assurance Society* (N. Y.), 46 L. R. A. 288, when no distribution has been made of the surplus by the officers or managers of the company, and the policy provides that the member shall be entitled to participate in the distribution of the surplus according to such principles and methods as may be from time to time adopted, which are expressly ratified and accepted by him.

---

COMBINATION IN RESTRAINT OF TRADE—PURCHASE OF COMPETITORS' BUSINESS.—Contracts among independent and unconnected manufacturers looking to the control of the price of their manufacture by limitation of production, by restrictions on distribution, or by express agreements, are held, in *Trenton Potteries Co.* v. *Oliphant* (N. J.), 46 L. R. A. 255, to be opposed to public interest and unenforceable. But it is held that courts would be obliged to recognize and enforce contracts for the purchase by an individual manufacturer of the business of his competitors even to the last one, although such purchases tend to eliminate competition and the last purchase would completely exclude it, at least for a time.

---

REHEARINGS—DECISIONS UPON POINTS NOT RAISED BY COUNSEL—SLANG.—The case of *Eclipse Oil Co.* v. *South Penn. Oil Co.* (in the Supreme Court of Appeals of West Virginia, 34 S. E. 923), was evidently a warm one—warm not only as between the parties to the record and their respective counsel, but also as between court and counsel. In the course of the opinion the court expressed itself in a manner that cannot fail to be interesting to the bar at large.

The case was one of unusual difficulty, involving the construction of an executory oil lease, doubtless of substantial value, providing for its surrender at any time without payment of rent or fulfillment of any of its covenants on the part of the lessee. Though the able counsel in the proceeding had not raised the point nor made the contention in any way, the court held that the lease created a mere right of entry at will, terminable by the lessor at any time before execution by the lessee, and that the execution of a second lease and possession thereunder was such a termination and avoided the first lease. Citing *Cowan* v. *Iron Co.*, 83 Va. 347.

The court in the passage presently to be quoted concedes the delicacy and importance of the legal issues involved. It is not the purpose to express here an opinion upon them. Judge Brannon filed a vigorous dissenting opinion, which he says that he did not have time to elaborate, and in which he described the judgment of his associates as making of the lease "a mere shadow, conferring practically nothing, because terminable the week after its date . . . . an airy nothing to perish at any moment at the lessor's will." It is desired here only to call attention to certain utterances of the court upon the points above indicated and upon which there was no expressed dissent.

A judgement of affirmance was first rendered November 28, 1899, and a petition for a rehearing filed by counsel for appellant company. We have not had an opportunity of examining this, but cannot doubt that it contained fuel sufficient in amount and quality to generate the degree of temperature (F.) indicated by passages of the opinion filed February 5, 1900, refusing a rehearing.